

AMENDED IN SENATE MARCH 18, 2003

SENATE BILL

No. 59

Introduced by Senator Escutia

January 15, 2003

An act to ~~amend Section 395 of, and to add Section 395.5 to, add~~ Section 366.28 to the Welfare and Institutions Code, relating to adoption.

LEGISLATIVE COUNSEL'S DIGEST

SB 59, as amended, Escutia. Dependent children ~~and adoption:~~
~~appeals placement.~~

Existing law authorizes the juvenile court to determine the placement of children who are dependent children of the juvenile court.

This bill would provide that following any hearing at which the court enters an order that a dependent child is to reside in, be retained in, or be removed from a specific placement, except an order terminating parental rights or appointing a guardian, review of that order shall be made exclusively by a petition for an extraordinary writ, as specified. The bill would also provide that this provision does not affect the appellate rights of a parent or legal guardian.

The bill would also require the Judicial Council to adopt a rule of court by July 1, 2004, to implement this provision.

~~Existing law provides that a judgment in a proceeding to adjudge a child a dependent child of the juvenile court may be appealed from in the same manner as any final judgment.~~

~~This bill would create an exception to that provision by providing that appeals from an order that is issued during or subsequent to a disposition hearing, determines the placement of a dependent child, and determines, or includes findings that may be taken into consideration~~

by a court in determining, who may adopt the child must be made by filing a petition for a writ of mandate, prohibition, habeas corpus, or certiorari to a court of appeal. The bill would require the petition to be filed within a specified time period and would specify the applicable rules of court governing the petition.

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~—yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 ~~SECTION 1. Section 395 of the Welfare and Institutions~~

2 ~~SECTION 1. Section 366.28 is added to the Welfare and~~
3 ~~Institutions Code, to read:~~

4 366.28. (a) *The Legislature finds and declares that delays*
5 *caused by appeals from court orders regarding the placement of a*
6 *dependent child and affecting the permanency of a potential*
7 *adoptive placement may cause a substantial detriment to the child.*
8 *The Legislature recognizes that the juvenile court intervenes in*
9 *placement decisions only in exceptional circumstances, and this*
10 *section is not intended to place additional authority or*
11 *responsibility on the juvenile court.*

12 (b) *Following any hearing at which the court, on its own*
13 *motion or on the motion of any party or person who has standing,*
14 *enters an order that a dependent child is to reside in, be retained*
15 *in, or be removed from a specific placement, review of the order*
16 *shall be made exclusively by a petition for extraordinary writ*
17 *consistent with the process set forth in Rule of Court 39.1B.*

18 (c) *This section does not affect the appellate rights of a parent*
19 *or legal guardian. This section does not apply to an order*
20 *terminating parental rights, or an order appointing a guardian.*

21 (d) *The Judicial Council shall adopt a rule of court on or before*
22 *July 1, 2004, to implement this section.*

23 ~~Code is amended to read:~~

24 ~~395. Except as otherwise provided in Section 395.5, a~~
25 ~~judgment in a proceeding under Section 300 may be appealed from~~
26 ~~in the same manner as any final judgment, and any subsequent~~
27 ~~order may be appealed from as from an order after judgment; but~~
28 ~~no such order or judgment shall be stayed by the appeal, unless,~~
29 ~~pending the appeal, suitable provision is made for the~~
30 ~~maintenance, care, and custody of the person alleged or found to~~

1 ~~come within the provisions of Section 300, and unless the~~
2 ~~provision is approved by an order of the juvenile court. The appeal~~
3 ~~shall have precedence over all other cases in the court to which the~~
4 ~~appeal is taken.~~

5 ~~A judgment or subsequent order entered by a referee shall~~
6 ~~become appealable whenever proceedings pursuant to Section~~
7 ~~252, 253, or 254 have become completed or, if proceedings~~
8 ~~pursuant to Section 252, 253, or 254 are not initiated, when the~~
9 ~~time for initiating the proceedings has expired.~~

10 ~~An appellant unable to afford counsel, shall be provided a free~~
11 ~~copy of the transcript in any appeal.~~

12 ~~The record shall be prepared and transmitted immediately after~~
13 ~~filing of the notice of appeal, without advance payment of fees. If~~
14 ~~the appellant is able to afford counsel, the county may seek~~
15 ~~reimbursement for the cost of the transcripts under subdivision (c)~~
16 ~~of Section 68511.3 of the Government Code as though the~~
17 ~~appellant had been granted permission to proceed in forma~~
18 ~~pauperis.~~

19 ~~SEC. 2.—Section 395.5 is added to the Welfare and Institutions~~
20 ~~Code, to read:~~

21 ~~395.5. (a) The Legislature finds that delays caused by~~
22 ~~appeals from orders which both determine the placement of~~
23 ~~dependent children and affect who may adopt the children,~~
24 ~~adversely affect the children. In order to reduce these delays, the~~
25 ~~Legislature enacts this section.~~

26 ~~(b) An appeal from an order that is issued during or subsequent~~
27 ~~to a disposition hearing, determines the placement of a dependent~~
28 ~~child, and determines, or includes findings that may be taken into~~
29 ~~consideration by the court in determining, who may adopt the~~
30 ~~child, shall be made exclusively by petition for a writ of mandate,~~
31 ~~prohibition, habeas corpus, or certiorari to a court of appeal.~~

32 ~~(c) (1) Any petition for a writ of mandate, prohibition, habeas~~
33 ~~corpus, or certiorari to a court of appeal filed pursuant to this~~
34 ~~section and taken from an order of a judge shall be filed within 10~~
35 ~~days of the date of the order.~~

36 ~~(2) Any petition for a writ of mandate, prohibition, habeas~~
37 ~~corpus, or certiorari to a court of appeal filed pursuant to this~~
38 ~~section and taken from an order of a subordinate judicial officer,~~
39 ~~shall be filed within 25 days of that order unless a rehearing is~~
40 ~~requested pursuant to Section 252 or 253. If a proceeding pursuant~~

1 to Section 252 or 253 is initiated, the petition for a writ shall be
2 filed within 10 days after the completion of those proceedings.
3 (d) Rules 56 and 56.4 of the California Rules of Court, as those
4 rules read on January 1, 2002, shall apply to any petition filed
5 pursuant to this section. Rules 56.5 and 60 of the California Rules
6 of Court, as those rules read on January 1, 2002, do not apply to
7 petitions for writs of habeas corpus brought pursuant to this
8 section.

